



County of Fairfax, Virginia

AMENDMENT

AMENDMENT NO. 1

2020 April 9 | 06:11:25 PDT

CONTRACT TITLE: Universal Forensic Extraction

CONTRACTOR

Cellebrite, Inc.
7 Campus Dr., Suite 210
Parsippany, NJ 07054

SUPPLIER CODE

1000007171

CONTRACT NO.

4400008617

By mutual agreement, the above contract is hereby amended as follows:

- The following is hereby added to the pricing schedule contained in the contract:

Item No.	Product Code	Item Description	Net Price per Unit
5	F-UFD-03-002	UFED Touch2, Ultimate, Standard	\$10,000.00
6	A-SOW-11-003	UFED 4PC, Ultimate SW, Renewal	\$3,700.00
7	A-SOW-09-003S	Annual SW Updates – PA SW Seat	\$1,100.00
8	U-AIS-02-049	Premium software (Unlimited iOS & Android)	\$125,000.00
9	U-AIS-02-055	Premium 1 Action (SN:855895448)	\$1,500.00
10	A-SOW-09-001D	UFED Phy Analyzer SW Seat Dongle	\$4,000.00

- The End User License Agreement (Attachment A of this Amendment) hereby replaces the End User License Agreement attached to the existing License Agreement Addendum.

Department of Procurement & Material Management

12000 Government Center Parkway, Suite 427
Fairfax, VA 22035-0013

Website: www.fairfaxcounty.gov/procurement

Phone 703-324-3201, TTY: 711, Fax: 703-324-3228

All other prices, terms and conditions remain the same.

Please provide a current Certification of Insurance (COI) in Accordance with the CONTRACT INSURANCE PROVISIONS, Special Provisions, Paragraph 17, within ten (10) days after receipt of the executed amendment.

ACCEPTANCE:

BY: 
(Signature)

General Manager, North America
(Title)

Derek Brown
(Printed)

04/08/2020
(Date)

DocuSigned by:

Steve Pierson

9BE821303D064GD...

Cathy A. Muse, CPPO
Director/County Purchasing Agent

DISTRIBUTION:

DOF – Accounts Payable/e

FCPD – Michael Estelle/e

Sheriff's Office – Michelle Nelson/e

Contractor – dharmesh.patel@celebrite.com

Contract Specialist – Ryan Justus

ACS, Team 1 – Cynthia Parker

DPMM, Supplier Diversity – Chris McGough/e



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This EULA governs Buyer's access to and use of any Software and/or any Product (as defined below) first placed in use by Buyer on or after the release date of this EULA (the "Release Date").

1. DEFINITIONS – In this Agreement, the following capitalized terms shall have the meaning set forth below:

"Affiliate" of a party means such party's parent corporation, an entity under the control of such party's parent corporation at any tier or an entity controlled by such party at any tier. For these purposes, "control" shall mean the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of more than 50% of the outstanding voting interests in such entity or otherwise.

“Authorization Product” means a product sold by Cellebrite or an authorized reseller of Cellebrite with embedded License Authorization Software, including but not limited to a USB dongle with embedded License Authorization Software.

“Authorized Users” means the number of Users that Buyer is licensed to have access to the applicable Software, which may include Concurrent Users and/or Named Users, all as set forth in the Agreement. If the number of Authorized Users is not otherwise set forth in the Agreement, the number of Authorized Users shall be deemed to be equal to the number of Products (other than Authorization Products) purchased by Buyer.

“Cellebrite” means (i) Cellebrite Mobile Synchronization Ltd., an Israeli corporation with offices at 94 Shlomo Shmeltzer Road, Petach Tikva, Israel 4970602 or (ii) the subsidiary of Cellebrite Mobile Synchronization Ltd. (including without limitation Cellebrite Inc., Cellebrite GmbH, Cellebrite APAC Pte. Ltd. or Cellebrite Soluções Tecnológicas Ltda.), which has an agreement with Buyer and/or issues invoices to Buyer with respect to any Software and/or Product, as applicable.

“Concurrent Users” means the number of Authorized Users (whether Named Users or not) of Buyer concurrently and/or simultaneously accessing, using or otherwise enjoying the benefit (except reviewing results of analyses generated by Software) of Software, either directly or indirectly from a remote location. If a single User connects to Software using multiple concurrent log-ins or connections, each such active logical connection or log-in is counted toward the number of Concurrent Users.

“Documentation” means any documentation related to any Software provided by Cellebrite.

“Embedded Software” means a copy of Software delivered embedded in or loaded onto a Product when such Product is sold by Cellebrite. Any Updates or Upgrades to Embedded Software are also deemed “Embedded Software”, notwithstanding being separately delivered from the applicable Product.

“Law” shall mean any law, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction or requirement of or by any governmental authority, as may be amended, changed or updated from time to time.

“License Authorization Software” means Software that is provided together with hardware on which it is embedded that is used to validate the authorized use of standalone Software.

“License Term” means the term of a paid subscription to an instance of Software or a unit of Product.

“Named Users” means a User authorized by Buyer to access or use the Software through the assignment of a single user ID, regardless of whether such User is using Software at any given time. A non-human device capable of accessing or access Software is counted as a Named User.

“Product” means a product (hardware and Software) sold by Cellebrite or an authorized reseller of Cellebrite. The term “Product” includes without limitation the UFED Pro series, UFED field series and Analytics series of products. “Product” includes Authorization Products.

“Remote Access Protocol” means any remote access application, including without limitation Remote Desktop Protocol (RDP) and Windows Remote Management (WinRM), used to connect a single remote computer (e.g., a laptop) to a single host computer (e.g., a desktop) with an Authorization Product directly connected to such host computer for each Authorization Product then licensed by Buyer, as long as such Authorized User, single remote computer and single host computer with an Authorization Product are all located in the Territory.

“Software” means an instance of a program, module, feature, function, service, application, operation or capability of any Cellebrite-supplied software. The term “Software” includes without limitation any Embedded Software, standalone software or any License Authorization Software.

“Territory” means the country in which Product was purchased or Software was licensed from Cellebrite or an authorized reseller of Cellebrite.

“Third Party” means an individual or entity other than Buyer, Cellebrite and Cellebrite’s Affiliates.

“Third Party Software” means certain software provided by a Third Party embedded in any Product, either as a standalone feature or as part of any Software, and which may be subject to additional end user license restriction and agreements.

“Update” means an update to any Software that is provided by Cellebrite and that may incorporate (i) corrections of any substantial defects; (ii) fixes of any minor bugs; (iii) at the sole discretion of Cellebrite, allowing additional compatibility of the Software with mobile devices provided by Third Parties; and/or (iv) at the sole discretion of Cellebrite, minor enhancements to the Software; provided, however, that Updates shall not include Upgrades. Updates are generally identified by Cellebrite by a change to the version number to the right of the first decimal point (e.g., version 4.1 to 4.2).

“Upgrade” means a new release of any Software that incorporates substantial changes or additions that (i) provide additional value and utility; (ii) may be priced and offered separately as optional additions to any Software; and/or (iii) are not generally made available to Cellebrite’s customers without a separate charge. Upgrades are generally identified by Cellebrite by a change to the version number to the left of the first decimal point (e.g., version 4.2 to 5.0).

“User” means an individual able to gain access to any Software functionality.

“You” means any individual seeking the benefit of or evaluating this EULA.

2. LICENSE GRANT

- A. Software. Subject to the terms and conditions of this EULA (including without limitation as set forth in Sections 2.E and 2.F), Cellebrite hereby grants to Buyer, and Buyer accepts, upon delivery of any Software, during the License Term a non-exclusive, non-transferable and non-sublicensable license with respect to such Software to (i) allow the Authorized Users to use such Software, in executable form only, and any accompanying Documentation, only for Buyer’s internal use in connection with the Products, in the Territory (or any other location specifically authorized by Cellebrite in writing) and only as authorized in the Agreement, and subject to the terms hereof; ii) make a reasonable number of copies of Software, (except with respect Embedded Software), for use only as licensed in this EULA, though in no case more than the number of Authorized Users; and (iii) make one (1) copy of Software, (except with respect Embedded Software), for backup, archival or disaster recovery purposes.
- i. Embedded Software Limitations. Buyer shall use any Embedded Software solely for execution on the unit of Product originally delivered to Buyer with such Embedded Software installed, or any replacement unit provided under a warranty from Cellebrite. Any Update or Upgrade of such Embedded Software that Cellebrite has licensed to Buyer may be loaded and executed only on the unit of Product on which any originally licensed Software is authorized to execute.
- ii. License Exclusion. Notwithstanding any other provision of this EULA, except as may otherwise be required by applicable Law, no license is granted for installation or use of any Software or associated Update or Upgrade on any Product resold by anyone who is not an authorized reseller of Cellebrite for such Product.

- iii. Single Product; Single Authorization Product. Buyer's license to any Embedded Software is limited to a license to use such Embedded Software on one (1) Product for each Product purchased from Cellebrite or Cellebrite's authorized reseller. Buyer's license to any License Authorization Software is limited to a license to use such License Authorization Software on one (1) Authorization Product for each license to such standalone Software the authorized use of which is validated by such License Authorization Software and where such license is purchased from Cellebrite or Cellebrite's authorized reseller.
 - iv. Authorization Products. Without limiting Section 2.F, Buyer shall not, and shall not permit any User to, use any Authorization Product on a computer other than the computer to which such Authorization Product is directly connected (*i.e.*, not through a network), except that an Authorized User may use Remote Access Protocol with Cellebrite's UFED Physical Analyzer. Buyer shall ensure that multiple users cannot use Remote Access Protocol to access UFED Physical Analyzer simultaneously. For the avoidance of doubt, subject to the terms and conditions of this EULA, sharing a USB dongle among Concurrent Users is permitted.
 - v. Remote Access Protocol. Buyer expressly acknowledges, agrees and warrants that except as required for use by Concurrent Users as allowed by the Agreement and as provided herein each computer running an Authorization Product will be configured or at least limited to serve only one remote connection at a time. In other words, only one Authorized User can use a Remote Access Protocol at the same time. For example, if a host computer is installed with multiple instances of Cellebrite's UFED Physical Analyzer, Buyer will ensure that it is not possible for multiple remote users to connect to the host computer and/or ensure that the foregoing does not occur. Regarding any other Cellebrite products or software other than Cellebrite's UFED Physical Analyzer, Buyer may not use a Remote Access Protocol unless expressly agreed to in writing by Cellebrite.
 - vi. Named Users. In the event that the Agreement specifies that any Software may be used by Named Users, Buyer shall ensure that the use of such Software shall be used only by the applicable Named Users. Buyer shall assign for each Named User a unique login credential for the purpose of allowing the Named User to access and use such Software. No more than one User may use each unique combination of login credentials, and the sharing of such credentials is expressly prohibited. Buyer shall be responsible for ensuring the security and confidentiality of its Named User login credentials.
 - vii. Concurrent Users. In the event that the Agreement specifies that any Software may be used by Concurrent Users, Buyer may install one instance of such Software on the designated host server as specified in the Agreement for concurrent and simultaneous use and/or access by such number of Concurrent Users set forth in the Agreement. Buyer shall ensure that the number of Concurrent Users accessing such Software at any time shall not exceed such number set forth in the Agreement. Buyer must keep a record of all Authorized Users who are Concurrent Users.
- B. Updates and Upgrades.
- i. Updates. Updates or Upgrades to any Software may be made available to Buyer pursuant to a separate agreement between Cellebrite and Buyer. Any particular Update or Upgrade shall be licensed under the terms of the Software that is being updated by such Update or Upgrade, as the case may be.
 - ii. Limitation. Except as expressly provided in the Agreement, Buyer shall have no rights in any Update or Upgrade to Software, nor any rights to support services associated with such Software.

- iii. No Obligation. Nothing in this EULA requires Cellebrite to provide Updates or Upgrades to Buyer or Buyer to accept such Updates or Upgrades. The provision of any Updates or Upgrades shall be governed by a separate agreement between Cellebrite and Buyer, or by a purchase order issued by Buyer and accepted by Cellebrite, in Cellebrite's sole discretion.
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- C. Specific License Terms for UFED Family of Products. The terms in this Section 2.C apply only to the UFED family of products (including without limitation UFED Touch, UFED 4PC, UFED TK, UFED CHINEX, Reader, UFED Ultimate, UFED Physical Analyzer, UFED Logical Analyzer, UFED Phone Detective, , UFED Cloud Analyzer, UFED InField Kiosk, UFED InField).
- i. Any use or operation of the Cellebrite UFED family of products in connection with any product and/or mobile device developed, manufactured, produced, programmed, assembled and/or otherwise maintained by any person or entity shall be permitted only after the User of the Cellebrite UFED family of products has obtained any consents or approvals required (to the extent required) pursuant to applicable Law.
 - ii. UNDER NO CIRCUMSTANCES SHALL CELLEBRITE, ITS OFFICERS, EMPLOYEES OR REPRESENTATIVES BE LIABLE TO BUYER, USER OR ANY THIRD PARTY UNDER ANY CAUSE OF ACTION (WHETHER IN CONTRACT, TORT OR OTHERWISE) FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR OTHER INDIRECT DAMAGES UNDER ANY LEGAL THEORY ARISING OUT OF OR RELATING TO THE USE OF ANY OF THE CELLEBRITE UFED FAMILY OF PRODUCTS IN CONNECTION WITH ANY PRODUCT AND/OR MOBILE DEVICE DEVELOPED, MANUFACTURED, PRODUCED, PROGRAMMED, ASSEMBLED AND/OR OTHERWISE MAINTAINED BY ANY PERSON OR ENTITY, WITHOUT OBTAINING EACH APPLICABLE CONSENT AND APPROVAL.
 - iii. Buyer represents, warrants and covenants to Cellebrite that (a) only Users of Buyer who have obtained any necessary consents and approvals pursuant to applicable Law shall be permitted to use any of the Cellebrite UFED family of products; (b) Users of Buyer shall only use any of the Cellebrite UFED family of products in compliance with the terms of service, terms of use or other agreement with a Third Party; and (c) Buyer and its Users shall only use any of the UFED family of Products in compliance with all applicable Laws.
- D. License Terms for Educational Use. If Buyer's purchase order or the Agreement indicates that Buyer is purchasing any Product and/or licensing any Software for educational use only, the following terms and conditions apply:

- i. Buyer hereby agrees not to use any Software which is licensed as being for educational use only for any purposes other than training of Buyer's employees, or, if Buyer is an accredited educational institution that is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any Law that replaces the same, for training of students who are full- or part-time students enrolled in a degree-granting program equivalent to a Bachelor's or higher degree.
 - ii. Unless otherwise agreed to in the Agreement, the prohibition regarding use of Products for training other than for training of Buyer's employees set forth in Section 2.F(n) shall continue to apply. Nothing in this EULA permits Buyer to use any trademarks of Cellebrite.
- E. No Right to Sublicense or Assign. Except to the extent otherwise required by applicable Law or expressly provided for assignment generally in the Agreement, no license provided in this Section 2 is sublicensable, transferable or assignable by Buyer, including by operation of Law, change of control, merger, purchase or otherwise, without the prior written consent of Cellebrite in each instance. Other than as expressly permitted by the foregoing, any attempted sublicense, transfer or assignment by Buyer shall be null and void.
- F. License Prohibitions. Notwithstanding anything to the contrary in this EULA, Buyer shall not, alone, through a User, an Affiliate or a Third Party (or allow a User, an Affiliate or a Third Party to): (a) modify any Software; (b) reverse compile, reverse assemble, reverse engineer or otherwise translate all or any portion of any Software; (c) pledge, rent, lease, share, distribute, sell or create derivative works of any Software; (d) use any Software on a time sharing, service bureau, application service provider (ASP), software as a service (SAAS), cloud services, rental or other similar basis; (e) make copies of any Software, except as provided for in the license grant above; (f) remove, alter or deface (or attempt any of the foregoing) proprietary notices, labels or marks in any Software; (g) distribute any copy of any Software to any Third Party, including without limitation selling any Product in a secondhand market; (h) use any Embedded Software other than with Products provided by Cellebrite or an authorized reseller of Cellebrite or for more than the number of Products purchased from Cellebrite or an authorized reseller of Cellebrite; (i) disclose any results of testing or benchmarking of any Software to any Third Party; (j) use any Update or Upgrade beyond those to which Buyer is entitled or with any Software to which Buyer does not have a valid, current license; (k) deactivate, modify or impair the functioning of any disabling code in any Software; (l) circumvent or disable Cellebrite's copyright protection mechanisms or license management mechanisms; (m) use any Software in violation of any applicable Law (including but not limited to any Law with respect to human rights or the rights of individuals) or to support any illegal activity or to support any illegal activity; (n) use any Software to violate any rights of any Third Party; (o) use any Product for any training purposes, other than for training Buyer's employees, where Buyer charges fees or receives other consideration for such training, except as authorized by Cellebrite in writing; or (p) attempt any of the foregoing. Cellebrite expressly reserves the right to seek all available legal and equitable remedies to prevent any of the foregoing and to recover any lost profits, damages or costs resulting from any of the foregoing.
- G. Legal Exception. Buyer agrees that, to the extent that any applicable Law (including without limitation national laws implementing 2009/24/EC on the Legal Protection of Computer Programs) grants Buyer the right to reverse engineer any Software to make it interoperable without Cellebrite's consent, before Buyer exercises any such rights, Buyer shall notify Cellebrite of such desire and, no later than sixty (60) days following receipt of such request, Cellebrite may decide either to: (a) perform the work to achieve such interoperability and charge its then-standard rates for such work to Buyer; or (b) permit Buyer to reverse engineer parts of such Software only to the extent necessary to achieve such interoperability. Only if and after Cellebrite, at its sole discretion, partly or completely denies Buyer's request, shall Buyer exercise its statutory rights.

- H. Network Usage. Buyer understands and agrees that Cellebrite may use Buyer's internal network and Internet connection for the limited purpose of transmitting license-related data at the time of installation, registration, use or update of Software to a Cellebrite-operated license server. At such time, Cellebrite may validate the license-related data in order to protect Cellebrite against unlicensed or illegal use of any Software. At its option, Cellebrite may only permit activation of Software upon exchange of license related data between Buyer's computer and the Cellebrite license server.
- I. Third Party Software. Buyer acknowledges and agrees that the access and use of any Software (or certain features thereof) may involve access and/or use of Third Party Software. Buyer shall comply with the terms and conditions applicable to any such Third Party Software, in addition to the terms and conditions of this EULA, including without limitation the following terms and conditions (to the extent applicable):
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<http://aka.ms/BingMapsMicrosoftPrivacy>
 - ii. OpenStreetMap – <http://www.openstreetmap.org/copyright>
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 - ii. In the event that Buyer or another party on its behalf, modifies, replaces or substitutes any Open Source Component used in or provided with this Software, Buyer hereby fully, forever, irrevocably and unconditionally releases and discharges Cellebrite, its Affiliates and its and their employees, officers, directors, resellers, distributors and representatives (collectively, "Released Parties") from any and all claims, charges, complaints, demands, actions, causes of action, suits, rights, debts, covenants, liabilities, warranties, performance and maintenance and support obligations (collectively, "Released Claims"), of every kind and nature, with respect to such Software, including without limitation any such Released Claims that arise as a matter of applicable Law.
 - iii. In the event that an Open Source License requires that the source code of its corresponding Open Source Component be made available to Buyer, and such source code was not delivered to Buyer with the Software, then Cellebrite hereby extends a written offer, valid for the period prescribed in such Open Source License, to obtain a copy of the source code of the corresponding Open Source Component, from Cellebrite. To accept this offer, Buyer shall contact Cellebrite at support@cellebrite.com.

- L. Personal Data. The parties acknowledge and agree that: (a) Within the scope of this Agreement, the Product is an on-premise solution used and operated solely by Buyer without the involvement of Cellebrite; (c) Cellebrite is not engaged in any processing of 'personal data' (as this term is used in Laws governing data privacy and data protection) that flows through the Product; and therefore (c) With respect to Cellebrite activities in the scope of this Agreement, Cellebrite is neither a 'data controller' nor 'data processor' (as these terms are used in Laws governing data privacy and data protection).
3. **OWNERSHIP** – Cellebrite (or its licensors) retains ownership of all right, title and interest in and to any Software and Documentation and any derivative works thereof, and all copies of the Software and/or Documentation. Nothing in this EULA constitutes a sale, transfer or conveyance of any right, title or interest in any Software and/or Documentation or any derivative works thereof. Notwithstanding anything to the contrary, all Software is licensed and not sold and any reference to a sale of Software shall be understood as a license to Software under the terms and conditions of the Agreement.
4. **CONFIDENTIALITY** – Buyer and/or Cellebrite may each disclose to the other proprietary marketing, technical or business information related to the subject of the Agreement ("Confidential Information"). Trade Secret (as defined below) of Cellebrite is Confidential Information of Cellebrite. Technical information relating to Software or Documentation and any Software or Documentation is Confidential Information of Cellebrite without any marking requirement, but any other information disclosed in writing must be marked "confidential", "proprietary" or the like to be deemed the Confidential Information of a party. Information disclosed orally may be deemed Confidential Information if the disclosing party says it is proprietary and summarizes it in a writing to the other party within twenty (20) days of the oral disclosure.

Pursuant to 18 U.S.C. §1833(b) , Buyer shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of Cellebrite's Trade Secrets (as defined below) only if such disclosure is made: (i) in confidence to a Federal, State, or local government official or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law; or (ii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In court proceedings claiming retaliation by Cellebrite for Buyer's reporting a suspected violation of law, Buyer may only disclose Cellebrite Trade Secrets to Buyer's legal counsel and may only use the Trade Secret information, if Buyer (i) files documents containing Trade Secrets under seal; and (ii) Buyer does not otherwise disclose Cellebrite Trade Secrets, except pursuant to a court order.

The term "Trade Secret" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if: (a) Cellebrite has taken reasonable measures to keep such information secret; and (b) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

The receiving party shall: (a) hold Confidential Information in confidence using the same degree of care as it normally exercises to protect its own proprietary information but at least reasonable care, (b) restrict disclosure and use of Confidential Information to employees (including any agents, contractors or consultants) with a need to know, and not disclose it to any other parties, (c) advise those employees, agents, contractors and consultants of their obligations with respect to Confidential Information, (d) not copy, duplicate, reverse engineer or decompile Confidential Information, (e) use Confidential Information only in furtherance of performance under the Agreement, and (f) upon expiration or termination of the Agreement, return all Confidential

Information to the disclosing party or at the request of the disclosing party, destroy such Confidential Information.

The receiving party shall have no obligation regarding Confidential Information that: (u) was previously known to it free of any confidentiality obligation, (w) was independently developed by it, (x) is or becomes publicly available other than by unauthorized disclosure, (y) is disclosed to third parties by the disclosing party without restriction, or (z) is received from a third party without violation of any confidentiality obligation.

If a party is faced with legal action or a requirement under applicable Law to disclose or make available Confidential Information received hereunder, such party shall promptly notify the disclosing party and, upon request of the latter, cooperate in contesting such action or requirement at the disclosing party's expense. Neither party shall be liable for damages for any disclosure or unauthorized access pursuant to legal action or applicable Law or for inadvertent disclosure, access, or use if the customary degree of care as it uses with respect to its own proprietary information has been exercised and if, upon discovery of such inadvertent disclosure, access, or use the receiving party has endeavored to prevent any further (inadvertent or otherwise) disclosure or use.

In the event that the Agreement has provisions relating to protecting the confidentiality of disclosures under the Agreement, this Section 4 shall be of no force and effect.

5. EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY.

- A. Definitions. For purposes of the exclusive remedies and limitations of liability set forth in this Section 5, Cellebrite shall be deemed to include its Affiliates and its and their directors, officers, employees, agents, representatives, shareholders, subcontractors and suppliers; and "damages" shall be deemed to refer collectively to all injury, damage, loss or expense incurred.
- B. Exclusive Remedies. Cellebrite's entire liability and Buyer's exclusive remedies against Cellebrite for any damages caused by any Product or Software defect or failure, or arising from the performance or non-performance of any obligation hereunder, regardless of the form of action, whether in contract, tort including negligence, strict liability or otherwise shall be:
 - i. For bodily injury or death to any person proximately caused by Cellebrite, Buyer's direct damages; and
 - ii. For claims other than as set forth above, Cellebrite's liability shall be limited to direct damages that are proven, in an amount not to exceed the total amount paid by Buyer to Cellebrite during the twelve (12) month period that immediately preceded the event that gave rise to the applicable claim.
- C. Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION OF THIS EULA, CELLEBRITE SHALL NOT BE LIABLE FOR INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND, WHETHER OR NOT CELLEBRITE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS PROVISION SHALL APPLY EVEN IN THE EVENT OF THE FAILURE OF AN EXCLUSIVE REMEDY.
- D. No Liability to any Third Party. TO THE MAXIMUM PERMITTED EXTENT, CELLEBRITE DISCLAIMS ANY AND ALL LIABILITIES OR OBLIGATIONS WHATSOEVER RELATED TO ANY PRODUCT OR SOFTWARE OR LICENSING OF ANY SOFTWARE TO, OR USE BY, ANYONE OTHER THAN BUYER.

- E. Third Party Software Liability. Notwithstanding anything to the contrary in this EULA, Cellebrite shall not be liable to Buyer or any User for any damages due to use of any Third Party Software. The limitations and exclusions from liability under the terms and conditions applicable to any Third Party Software (which are applicable to the arrangement between Buyer and the applicable provider of such Third Party Software) shall govern and apply with respect to the use of each such Third Party Software.
6. **BUYER INDEMNITY** – To the maximum extent permitted by applicable Law, Buyer shall, at its expense: (i) indemnify and hold Cellebrite and its Affiliates and its and their directors, officers, employees, agents, representatives, shareholders, subcontractors and suppliers harmless from and against any damages, claim, liabilities and expenses (including without limitation legal expenses) (whether brought by a Third Party or an employee, consultant or agent of Buyer's) arising out of any (a) misuse or use of any Product or Software furnished under the Agreement in a manner other than as authorized under this EULA, including without limitation using the Product or Software in a manner that violates applicable Law including without limitation a person's Fourth Amendment rights under the United States Constitution (or its equivalent in the Territory), (b) modifications to the Products or Software made by or on behalf of Buyer without prior written authorization of Cellebrite or its Affiliates; (c) Buyer's combination of any Products or Software with other products or software, without prior written authorization of Cellebrite or its Affiliates, including without limitation any installation of any software on any Product; (d) Buyer's combination or operation of the Software in connection with a third-party product, software or service; (e) misappropriation of a person's list of contacts or other personal information, (f) failure to obtain consents and approvals required by applicable Law for the use of any of the UFED family of products in connection with a Third Party product and/or mobile device, as required under Section 2.C hereof or (g) use of any Product or Software furnished under the Agreement in breach of or to violate the terms of service, terms of use or other agreement with a Third Party; (ii) reimburse Cellebrite for any expenses, costs and liabilities (including without limitation legal expenses) incurred relating to such claim; and (iii) pay all settlements, damages and costs assessed against Cellebrite and attributable to such claim.
7. **CELLEBRITE INDEMNITY** – Cellebrite will, at its expense: (i) indemnify, defend and hold Buyer and its Affiliates and its and their officers and directors harmless from any claim (whether brought by a Third Party or any customer of Buyer) to the extent alleging that any Software furnished under this Agreement directly infringes any patent, copyright or trademark or misappropriates any trade secret, in each case having legal effect in the Territory; (ii) reimburse Buyer for any expenses, costs and liabilities (including reasonable attorney's fees) incurred relating to such claim; and (iii) pay all settlements, damages and costs assessed against Buyer and attributable to such claim.

In addition, in connection with satisfying its obligations hereunder, Cellebrite shall have the right, at any time and at its option and expense to: (a) procure for Buyer and/or its customers the right to continue using such Software, or any Product on which such Software is embedded; (b) replace or modify any such Software, or any Product on which such Software is embedded, provided or to be provided, to be free of such infringement; or (c) require return of such Software, or any Product on which such Software is embedded, and refund the purchase price or license price depreciated on a straight-line basis over a three (3) year period from the delivery date.

Notwithstanding the foregoing, (A) Cellebrite shall have no obligations under this Section 7 with respect to any Excluded Item; (B) the maximum liability of Cellebrite in relation to any such claims under this Section 7 shall not exceed the amounts paid by Buyer to license any Software for which such infringement claim was filed or purchase Products including such Software in the then-previous twelve (12) months; and (C) in the event that there are any other indemnification obligations with respect to infringement of any patent, copyright or trademark or misappropriation of any trade secret under the Agreement, this Section 7 shall be of no force and effect.

Cellebrite's obligations under this Section 7 are conditioned upon: (1) Buyer giving Cellebrite prompt written notice (within no more than thirty (30) days) after any such claim, unless Cellebrite would not be materially prejudiced thereby; (2) Cellebrite having complete control of the defense and settlement of such claim; (3) Buyer cooperating fully with Cellebrite to facilitate the defense or settlement of such claim; and (4) Buyer's substantial compliance with the Agreement.

The sale of any Product by Cellebrite shall not in any way confer upon Buyer, or upon anyone claiming under Buyer, any license (expressly, by implication, by estoppel or otherwise) under any patent claim of Cellebrite or others covering or relating to any combination, machine or process in which such Product is or might be used, or to any process or method of making such Product.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE REMEDY AND OBLIGATION OF THE PARTIES HERETO FOR INFRINGEMENT OR OTHER VIOLATION OF ANY INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF THIS AGREEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO.

8. WARRANTY

- A. Hardware Warranty. Subject to Buyer's compliance with the Agreement, Cellebrite warrants to Buyer that each Product, but not Software, related services or prototypes of any such Product, shall be materially in conformance with the written specification furnished or agreed to by Cellebrite for six (6) months after delivery (the "Warranty Period"). If any failure to materially conform to such specification ("Defect") is suspected in any Product during the Warranty Period, Buyer, after obtaining return authorization information from Cellebrite, shall ship suspected defective samples of the Product to Cellebrite in accordance with Cellebrite's instructions. No Product will be accepted for repair, replacement, credit or refund without the written authorization of Cellebrite. Cellebrite shall analyze the failures, making use, when appropriate, of technical information provided by Buyer relating to the circumstances surrounding such failures. Cellebrite will verify whether any Defect appears in the applicable Product. If a returned Product does not have a Defect, Buyer shall pay Cellebrite all costs of handling, inspection, repairs and transportation at Cellebrite's then-prevailing rates. If a returned Product has a Defect, Cellebrite shall, at Cellebrite's sole option, either repair or replace the defective Product with the same or equivalent Product without charge or, if such repair or replacement has not occurred by the forty fifth (45th) day following Cellebrite's receipt of the returned Product, credit or refund (at Buyer's option) the purchase price within ten (10) days after such forty fifth (45th) day; provided: (i) Buyer notifies Cellebrite in writing of the claimed Defect within thirty (30) days after Buyer knows or reasonably should know of the claimed Defect, (ii) the claimed Defect actually exists, and (iii) the Defect appears within the Warranty Period. Cellebrite shall deliver any replacement Product to Buyer (Ex Works Cellebrite's loading dock, Incoterms 2010). Any replaced Product or replaced parts of any Product shall become Cellebrite's property. In no event shall Cellebrite be responsible for de-installation or reinstallation of any Product or for the expenses thereof. Repairs and replacements covered by the above warranty are warranted to be free from Defects as set forth above with respect to any Defect that appears (i) within three (3) months after the date of repair or replacement or (ii) prior to the expiration of the original Warranty Period, whichever is later.
- B. Touch Screen Exclusion. Notwithstanding Section 8.A, the Warranty Period for the touch screen of any Product with a touch screen is the period from the date of Buyer's initial receipt of the Product until thirty (30) days after such date.
- C. Warranty of Title. Cellebrite warrants to Buyer that any title conveyed hereunder (excluding Software) shall be good and its transfer rightful, and that the Products delivered under this EULA shall be free from any liens, encumbrances and restrictions.

- D. Software Warranty. Cellebrite warrants to Buyer that for a period of sixty (60) days after the date of shipment, the Software will perform substantially in conformity with its Documentation. As Buyer's sole and exclusive remedy, Cellebrite will, at its sole expense, in its sole discretion and as its sole obligation, promptly repair or replace any Software that fails to meet this limited warranty.
- E. Third Party Software Warranty. Notwithstanding anything to the contrary in this EULA, Cellebrite does not provide any warranty with respect to any Third Party Software. The warranty under the terms and conditions applicable to any Third Party Software (which are applicable to the arrangement between Buyer and the applicable provider of such Third Party Software) shall govern and apply with respect to each such Third Party Software warranty.
- F. Exclusions. Notwithstanding anything to the contrary in this warranty, the warranties herein do not apply to, and Cellebrite makes no warranties with respect to defects in Products or Software in the following cases: (a) Buyer's misuse, damage or unauthorized modification of any Products or Software; (b) Buyer's combination of any Products or Software with other products or software, other than as authorized in writing by Cellebrite, including without limitation any installation of any software on any Product without Cellebrite's prior written approval; (c) placement of any Products or Software in an operating environment contrary to specific written instructions and training materials provided by Cellebrite to Buyer; (d) Buyer's intentional or negligent actions or omissions, including without limitation physical damage, fire, loss or theft of a Product; (e) cosmetic damage to the outside of a Product, including without limitation ordinary wear and tear, cracks or scratches; (f) for any Product with a touch screen, any defect in such a touch screen after thirty (30) days after the date of receipt of such Product, or any defect caused in a touch screen by Buyer's negligence or willful misconduct; (g) maintenance of any Product or Software in a manner that is contrary to specific written instructions provided by Cellebrite to Buyer; (h) a usage of a product or service not provided, authorized or approved by Cellebrite for use with any Product or Software; (i) any repair services not authorized or approved by Cellebrite; (j) any design, documentation, materials, test data or diagnostics supplied by Buyer that have not been authorized or approved by Cellebrite; (k) usage of any test units, experimental products, prototypes or units from risk lots (each of which is provided "AS IS"); (l) any Third Party original equipment manufacturer's restrictions on individual phones or models of phones that prevent the phones or models of phones from working with the Products or Software; (m) any damage to a Third Party device alleged to or actually caused by or as a result of use of a Product or Software with a device; (n) any Products that have had their serial numbers or month and year of manufacture or shipment removed, defected or altered; (o) any interactions or other effects relating to or arising out of the installation of copies of the Software beyond the number of copies authorized by an agreement between Cellebrite and Buyer; (p) any prejudicing of Cellebrite's ability to repair a defect caused by Buyer's failure to promptly notify Cellebrite in writing of such Defect; or (q) any Product or Software that has been resold or otherwise transferred to a Third Party by Buyer (each of (a)-(q), an "Excluded Item"). Without limiting the foregoing, Cellebrite's obligations under the warranty provided hereunder are conditioned upon Buyer's compliance with the terms of the Agreement.
- G. Limitation. Without limiting the foregoing, Cellebrite does not warrant that (i) the operation of any Software and/or Product will be error-free; (ii) all defects in any Software and/or Product will be corrected; or (iii) any Software may not operate on hardware or operating systems or in conjunction with other software other than as expressly specified in the Documentation or approved by Cellebrite in writing.
- H. Warranty Limitations. EXCEPT AS STATED IN THIS WARRANTY, CELLEBRITE, ITS AFFILIATES, AND ITS AND THEIR SUBCONTRACTORS AND SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. BUYER'S SOLE AND EXCLUSIVE REMEDY FOR FAILURE OF AN

ITEM TO CONFORM WITH ITS SPECIFICATIONS SHALL BE CELLEBRITE'S OBLIGATION (i) TO REPAIR OR (ii) TO REPLACE OR, (iii) IF NEITHER IS COMMERCIALY FEASIBLE, TO CREDIT OR REFUND (AT BUYER'S OPTION) SUCH ITEM AS SET FORTH ABOVE. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY FAILS OF ITS ESSENTIAL PURPOSE. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SOFTWARE AND PRODUCT REMAINS WITH BUYER.

- I. Repaired or Replaced Products. Before returning a Product for service, Cellebrite recommends that Buyer back up any data contained in such a Product. IN NO EVENT WILL CELLEBRITE, ITS AFFILIATES OR SUPPLIERS BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY DAMAGES OF ANY KIND WHATSOEVER RELATING TO OR ARISING OUT OF DAMAGE TO, OR LOSS OR CORRUPTION OF, ANY RECORDS, PROGRAMS OR OTHER DATA RESULTING FROM CELLEBRITE'S REPAIR OR REPLACEMENT SERVICES UNDER THIS WARRANTY, OR AS A RESULT OF A FAILURE OR MALFUNCTION OF A PRODUCT.

9. **DISABLING CODE**

- A. Disabling Code. Software may be provided to Buyer with code that allows Cellebrite to disable such Software. Any Updates or Upgrades to Software may include disabling code. Cellebrite agrees not to invoke such disabling code except as provided for in Section 9.B, without Buyer's prior consent, which may be given by telephone or email.
- B. Invocation of Disabling Code. In addition to the invocation of disabling code when Cellebrite has received Buyer's consent described in Section 9.A, Cellebrite may, at its option, invoke disabling code in Cellebrite's Software without receiving Buyer's consent: (i) if in Cellebrite's sole, reasonable discretion, Cellebrite believes that such Software has been, is being or will be used in violation of Laws; (ii) if Cellebrite is required to do so, because of a court or regulatory order; (iii) if Buyer has not paid an outstanding invoice more than sixty (60) days after such invoice is due; or (iv) if Buyer has used the Software other than as authorized by Buyer's license. Cellebrite shall have no liability to Buyer for any good faith invocation of any such disabling code.

10. **TERM AND TERMINATION**

- A. Term. The term of this EULA is while any Software is under Buyer's control or possession. Notwithstanding the foregoing, (i) the license to any Software may be terminated by Cellebrite if Buyer has not paid any invoice sixty (60) days after such invoice is due; and (ii) the license to any Software is only during the License Term applicable to such Software. The License Term shall be determined in a separate agreement between Cellebrite and the Buyer.
- B. Termination. Cellebrite shall have the right to terminate this EULA upon thirty (30) days' prior written notice to Buyer if Buyer has not cured any material breach of this EULA by the end of such thirty (30) day notice period. Upon termination of this EULA for any reason, (i) Buyer shall be responsible for payment for all purchase orders delivered to Buyer by Cellebrite before the effective date of termination; and (ii) Buyer shall destroy all copies of any Software under Buyer's control or possession.
- C. Survival. The provisions of Sections 1, 2.C, 2.E, 2.F, 2.H, 2.I, 3, 4, 5, 6, 9, 10.C, and 11-15 of this EULA shall survive any termination in accordance with their terms. In addition, any purchase order accepted by Cellebrite prior to the effective date of termination shall survive in accordance with its terms.

11. CHOICE OF LAW; JURISDICTION; GOVERNING LANGUAGE

- A. Choice of Law; Jurisdiction. Any dispute or claim relating to this EULA shall be solely and exclusively resolved in the applicable courts of the country of incorporation of the Cellebrite entity that sold the Product to Buyer (and, in the case of sales or licenses in the United States of America, in the federal or state courts located in New Jersey). Buyer hereby acknowledges and agrees that Cellebrite shall be entitled, at its sole and absolute discretion, to initiate any dispute or claim against Buyer in any jurisdiction as permitted by applicable Law, including without limitation with respect to any application for injunctive remedies (or an equivalent type of urgent legal relief), without any reference to the place of incorporation of the applicable Cellebrite entity.

The Laws governing this EULA shall exclusively be the Laws of the country of incorporation of the Cellebrite entity that sold any Product or licensed any Software to Buyer (and, in the case of sales or licenses in the United States of America, the Laws of the State of New York), without giving effect to any choice of Law rules that would result in the application of any Law of any other jurisdiction or to the United Nations Convention for the International Sale of Goods, except that sales or licenses in the United States of America shall not exclude the application of General Obligations Law 5-1401. The Uniform Computer Information Transactions Act shall not apply to this Agreement, in the event that it is passed in the jurisdiction set forth above.

- B. Governing Language. The parties hereto have required that this EULA be drawn in the English language, and that the English language version shall control over any translations thereof. If Buyer is located in Quebec, the following sentence shall apply: Les parties conviennent que cette EULA soient redigees en anglais.

- 12. ASSIGNMENT** – Neither party may assign its rights and obligations hereunder without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign this EULA to any Affiliate of the other or to an acquirer (by purchase, merger or otherwise) of all or substantially all of such party's business or assets relating to this EULA, provided that (i) the assignee promptly notifies Cellebrite and agrees in writing to Cellebrite to be bound by the terms and conditions of this EULA, (ii) neither the assignor nor assignee are in default hereunder. Any attempted assignment other than as permitted herein shall be null and void.

- 13. NO-WAIVER** – No course of dealing or failure of either party to strictly enforce any term, right or condition of the Agreement shall be construed as a waiver of such term, right or condition.

- 14. ENTIRE AGREEMENT** – The terms and conditions contained in this EULA supersede all prior oral or written understandings between the parties and shall constitute the entire agreement between the parties with respect to the subject matter of this EULA, except as provided for in the preamble to this EULA regarding the order of precedence. This EULA may not be modified or amended except by a writing signed by Buyer and Cellebrite.

- 15. CONSTRUCTION; SEVERABILITY** – The headings used in this EULA are for reference purposes only and will not be deemed to limit, expand or in any way affect the interpretation of any term or provision hereof. If any provision or part hereof shall be held to be invalid or unenforceable for any reason, then the meaning of such provision or part hereof shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save such provision or part hereof, it shall be severed herefrom, but without in any way affecting the remainder of such provision or any other provision contained herein, all of which shall continue in full force and effect unless such severance effects such a material change as to render the EULA unreasonable. In case of any inconsistency between this EULA and any other agreement, document and/or instrument entered into by Buyer and Cellebrite, the terms of this EULA shall prevail, except to the extent of the order of precedence set forth above.

Release Date: July 18, 2018